IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 1167 OF 1991

Sou.Saraswati Pandurang Devrukhakar .. Petitioner
vs
Sadashiv Laxman Fund .. Respondent
..
with WRIT PETITION NO. 1367 OF 1991

Sou.Saraswati Pandurang Devrukhakar .. Petitioner
vs
Sadashiv Laxman Fund ... Respondent
..
Mr.Jagdish Reddy for Mrs Suhasini Mutalik for Petitioner
Mr.H.M.Bhosale for Respondent

CORAM : D.G.KARNIK, J
DATE: 5TH AUGUST, 2004.

P.C.

1. By these petitions the petitionerlandlord challenges the common judgement and order passed by the learned VIth Additional District Judge, Pune in Civil Appeal No.1048 of 1987 and Civil Appeal No.752 of 1988 dismissing the petitioners suit.

The facts giving rise to these petitions are briefly stated below :

2. The petitioner is an owner and landlord of the property bearing House No. 649 Mahatma Phule Peth, Pune. The respondent is a tenant of one shed admeasuring 15 x 30 sq. ft. situated therein. The petitioner filed a suit bearing Civil Suit No.1485 of 1985 against the respondent for possession on the ground of reasonable and bonafide requirement, change of user, nuisance and that the respondent was not ready and willing to pay the rent and was a defaulter. The trial Court decreed the suit only on the ground of default and rejected the claim for possession on all other grounds. The tenant filed an appeal bearing Civil Appeal No.1048 of 1987 challenging the decree for possession passed against him on the ground of default. The petitioner also filed an appeal bearing Civil Appeal No. 752 of 1988 challenging the adverse findings recorded against the her on her claim of of bonafide requirement, change of user and nuisance. By a common judgment and order dated 31st March 1990 the VIth Additional District Judge allowed the appeal filed by the respondent-tenant and dismissed the appeal of the petitioner landlord. Since there were two appeals one filed by the respondent and one by the petitioner, the petitioner has filed these two separate writ petitions challenging the same common

judgment.

3. As regards the ground of reasonable and bonafide requirement, the trial Court held that the pleadings of the petitioner were scanty. She had not pleaded the details of her requirement nor had she given details of the accommodation in her possession. The trial Court also held that the petitioner has purchased the property just before the institution with full knowledge that it was occupied by the tenants. She had obtained possession of one room at the time of purchase and if she really required the additional premises, she would not have purchased the suit premises which were fully tenanted except for a room and would have purchased some other untenanted or vacant property. The appellate Court after careful consideration of the evidence and came to the conclusion that the petitioner had not proved reasonable and bonafide requirement. Both the Courts below also held that the respondent was financially weak and poor and greater hardship would be caused to him by passing a decree for possession. The finding as to the bonafide requirement and hardship recorded by the Courts below is possible and I see no reason to interfere in the said concurrent finding of fact recorded by the two Courts below.

4. As regards the ground of default, the trial Court held that the respondent was a defaulter and passed a decree under section 12 (3) (b) of the Bombay Hotel, Rents and Lodging Rates Control Act, 1947 (for short the Act) as it stood prior to its amendment in the year 1987. The respondent had not paid the rent from 1st December, 1976. Therefore, by a notice to quit dated 5th June, 1985 the petitioner demanded the arrears of rent and possession. Notice was received by the resondent on 12th June, 1985. According to the respondent, the rent of Rs.35/- per month demanded in the notice was excessive and exhorbitant and was not the standard rent. Within one month of the receipt of notice of demand the respondent filed an application bearing Misc. Application No.365 of 1985 for fixation of standard rent. The respondent has thus raised a dispute as to the amount of standard rent within one month of the receipt of the notice of demand issued under section 12 (2) of the Act. As the respondent raised a dispute about the standard rent within one month the case would not fall under clause (a) of sub-section 3 of section 12 of the Act. The trial Court has also held that the case did not fall under clause (a) but would fall under clause (b) of sub-section 3 of section 12 of the Act.

5. On receipt of the notice and filing of standard rent application, the tenant also requested the Court to pass an order under sub-section 3 of section 11

of the Act and permission to deposit the rent in the Court. On 10th July, 1985 the trial Court passed an order fixing the interim rent at the rate of Rs.25/- per month plus education cess. The trial Court also directed the respondent to deposit the arrears of rent within one month from the date of the order. On 17th August, 1985 the respondent deposited Rs.3300/- in Court. It is not disputed that on the date of deposit, only an amount of Rs.2800/- calculated at the rate of interim rent of Rs.25/- p.m. was in arrears. Thus, the respondents has deposited the entire arrears due as ordered by the Court. The trial Court however held that the deposit made by the tenant was 7 days too late. The order was passed by the trial Court on 10th July, 1985 and therefore the respondent ought to have deposited the rent within one month of the order i.e. on or before 10th August, 1985. The deposit made on 17th August, 1985 was 7 days too late. The trial Court rejected the contention that the delay of 7 days in depositing the rent was condoned by the Court by accepting the rent. On appeal, the appellate Court relying on the judgment of the Supreme Court in Mohon Laxman vs Noor Mohd. reported in AIR 1988 S.C. 1111, held that tenant was not required to deposit the rent with mathematical punctuality or exactitute but was required to reasonly conform with the directions issued by the Court of the deposit. The Appellate Court then noted that except for the delay in the first deposit, which was delayed by 7 days the respondent had always deposited the rent in advance and there was not even a single delay thereafter. In this view of the matter, the appellate Court held that the decree for eviction cannot be passed under section 12 (3) (b) of the Act.

6. Learned counsel for the petitioner urges that the appellate Court erred in holding that initial delay of 7 days could be condoned by the Cout. He submits that the Court has no power to condone the delay in the first deposit. He relies upon the judgment of the Supreme Court in Nasiruddin and others vs Sita Ram Agarwal reported in (2003) 2 Supreme Court Cases 577. In that case, the Supreme Court held that under section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 the Court neither had the power to extend the period for deposit of rent nor the power to condone the default in depositing the rent. Per contra, learned counsel for the respondent submits that the Court always has the power to extend time for payment of the deposit. Learned counsel relies upon the judgment of the Apex Court in Shamcharan Sharma vs. Dharamdas reported in AIR 1980 Supreme Court 587. While interpreting the provisions of the M.P.Accommodation Control Act, the Supreme Court held that the Court has the power to extend the time for payment or deposit and the payment of deposit within the extended time entitled the tenant

to claim protection of section 12 (3) of the M.P.Accommodation Control Act. The judgment in the case of Nasiruddin vs Sita Ram Agarwal was rendered by a bench of three Hon'ble Judges and the judgment in Shyamcharan Sharma vs Dharamdas was also rendered by a bench of three Hon'ble Judges of the Supreme Court. In the two judgments, the Apex Court was considering and interpreting of two different Acts namely Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and M.P.Accommodation Control Act, 1961 and on the interpretation of the provisions of the two different Acts, the Court came to different conclusions in the two cases cited above. It would therefore be necessary to see whether under the provisions of the Bombay Rent Act, the Court has the power to extend the period of deposit. Section 12 (3) (b) of the Bombay Rent Act as it stood at the relevant time reads as under :

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" (b) In any other case no decree for eviction shall be passed in any such suit if, on the first day of hearing, of the suit or on or before such other date as the Court@@
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may fix the tenant pays or tenders in Court the standard@@
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rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. " (Underlining supplied)

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7. Under section 12 (3) (b) a tenant is required to make the deposit of rent on the date of hearing of the

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suit or on such other date as the Court may fix. Thus, the Court is given powers to fix a date for depositing of rent and that date need not be the first date of hearing. I see no restriction on the powers of the Court to fix any date and/or to modify the date once fixed. It follows that the Court can fix different dates and thereby extend the time for making of an initial deposit of rent. Therefore, in my opinion the Court has a power under clause (b) of sub-section 3 of section 12 to extend the time for initial payment of arrears of rent.

8. In the present case, the Court accepted the deposit of Rs.3300/- made by the respondent on 17th August, 1985 which implies that the Court extended the time for payment of the arrears of rent. It is not disputed that further deposit of rent were made in time and in fact it was deposited in advance. In this view of the matter, the appellate Court was right in refusing to pass a decree for possession on the ground of default.

The grounds of change of user and nuisance were not pressed before me.

9. No other point was urged.

10. For these reasons, petition fails and is dismissed. Rule is discharged with no order as to costs.

D.G.KARNIK, J

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